**Njogu v Republic**

**Division:** Court of Appeal of Kenya at Nakuru

**Date of judgment:** 27 February 2006

**Case Number:** 270/05

**Before:** Omolo, O’kubasu and Githinji JJA

**Sourced by:** LawAfrica

**Summarised by:** H Kibet

*[1] Criminal procedure – Trial – Conduct of prosecution – Prosecution by an unqualified person –*

*Whether prosecution of appellant was proper – Section 85(2) – Criminal Procedure Code.*

**Editor’s Summary**

The appellant was charged with being in possession of narcotic drugs contrary to section 3(1) as read with section 3(2) of the Narcotic Drugs and Psychotropic Substances Control Act and cultivating *cannabis sativa* contrary to section 10(*c*) of the Act respectively. He pleaded guilty and was sentenced accordingly. His first appeal to the High Court was dismissed. He now appealed to the Court of Appeal on the ground that his trial had been conducted by an unqualified person, namely a police sergeant. Counsel for the respondent conceded the appeal on this point.

**Held** – Prosecution by a police sergeant was contrary to section 85(2) of the Criminal Procedure Code.

The proceedings in the trial magistrate’s court were therefore a nullity.

Appeal allowed. Conviction quashed and sentence set aside. No order made for retrial of appellant.

**No cases referred to in judgment**